

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1319

Introduced by Assembly Member Krekorian
(Coauthor: Assembly Member Davis Coauthors: Assembly Members
***Davis and Ma*)**

February 27, 2009

An act to repeal and add Chapter 4.5 (commencing with Section 1701) of Part 6 of Division 2 of the Labor Code, relating to talent services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1319, as amended, Krekorian. Talent services.

Existing law regulates the licensing and operation of talent services within the entertainment industry. These provisions govern the making and canceling of contracts, fees to be charged for services, records to be maintained by talent services, bonding requirements, and remedies for violations of these provisions, a violation of which constitutes a crime.

This bill would prohibit ~~talent services a person from providing or offering to provide, in exchange for an advance fee, employment, an audition, career management or development, or the procurement of an agent~~ *engaging, as specified, in an advance-fee talent representation service, as defined*. This bill would also impose additional disclosure and contract requirements for ~~other forms of advance-fee services a talent service, as defined~~. *The bill would make a violation of its provisions punishable as a misdemeanor and subject to a civil action.*

Because ~~this~~ *the* bill would ~~impose new restrictions on advance-fee talent services, the violation of which would be~~ *make additional conduct* a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that there exist in
2 connection with a substantial number of contracts for ~~advance-fee~~
3 talent services, sales practices and business and financing methods
4 which have worked a fraud, deceit, imposition, and financial
5 hardship upon the people of this state, particularly upon children
6 and other minors; that existing legal remedies are inadequate to
7 correct these abuses; that the ~~advance-fee~~ talent industry has a
8 significant impact upon the economy and well-being of this state
9 and its local communities; and that the provisions of this act
10 relating to these are necessary for the public welfare.

11 The Legislature declares that the purpose of this act is to
12 safeguard the public against fraud, deceit, imposition, and financial
13 hardship, and to foster and encourage competition, fair dealing,
14 and prosperity in the field of ~~advance-fee~~ talent services by
15 prohibiting or restricting false or misleading advertising and other
16 unfair, dishonest, deceptive, destructive, unscrupulous, and
17 fraudulent business practices by which the public has been injured
18 in connection with ~~advance-fee~~ talent services.

19 Nothing in this act is intended to prohibit talent training services,
20 talent counseling services, and talent listing services from
21 conducting business provided they comply with the provisions and
22 prohibitions set forth in this act.

23 SEC. 2. Chapter 4.5 (commencing with Section 1701) of Part
24 6 of Division 2 of the Labor Code is repealed.

25 SEC. 3. Chapter 4.5 (commencing with Section 1701) is added
26 to Part 6 of Division 2 of the Labor Code, to read:

CHAPTER 4.5. ~~ADVANCE-FEE~~ *FEE-RELATED* TALENT SERVICES

Article 1. Definitions

1701. For purposes of this chapter, the following terms have the following meanings:

(a) ~~“Advance fee” means any money or other valuable consideration paid or promised to be paid by or on behalf of an artist for services rendered or to be rendered by any person conducting business under this chapter. “Advance fee” does not include the following:~~

(1) ~~A commission for employment earned as an artist.~~

(2) ~~(A) Reimbursements for out-of-pocket costs actually incurred by the payee on behalf of the artist for services rendered or goods provided to the artist by an independent third party if all of the following conditions are met:~~

(i) ~~The payee has no direct or indirect financial interest in the third party.~~

(ii) ~~The payee does not accept any referral fee or other consideration for referring the artist.~~

(iii) ~~The services rendered or goods provided for the out-of-pocket costs are not, and are not represented to be, a condition for the payee to register or list the artist with the payee.~~

(iv) ~~The payee maintains adequate records to establish that the amount to be reimbursed was actually advanced or owed to a third party and that the third party is not a person with whom the payee has a direct or indirect financial interest or from whom the payee receives any consideration for referring the artist. To satisfy this condition, the payee shall maintain the records for at least three years and make them available for inspection and copying within 24 hours of a written request by the Labor Commissioner, the Attorney General, a district attorney, a city attorney, or a state or local enforcement agency.~~

(B) ~~A person asserting a defense based upon this paragraph has the burden of producing evidence to support the defense.~~

(b)

(a) “Artist” means a person who is or seeks to become an actor, actress, model, extra, radio artist, musical artist, musical organization, director, musical director, writer, cinematographer, composer, lyricist, arranger, or other person rendering professional

1 services in motion picture, theatrical, radio, television, Internet,
2 print media, or other entertainment enterprises *or technologies*.

3 ~~(e) “Audition” means a meeting, which may include a~~
4 ~~performance, for the purpose of obtaining a current or future~~
5 ~~employment opportunity, whether compensated or not, before any~~
6 ~~person, including a producer, director, casting director, or associate~~
7 ~~thereof, who has or is represented to have input into the decision~~
8 ~~to select an artist for the employment opportunity.~~

9 *(b) “Audition” means any activity for the purpose of obtaining*
10 *employment, compensated or not, as an artist whereby an artist*
11 *meets with, interviews or performs before, or displays his or her*
12 *talent before, any person, including a producer, a director, or a*
13 *casting director, or an associate, representative, or designee of a*
14 *producer, director, or casting director, who has, or is represented*
15 *to have, input into the decision to select an artist for an employment*
16 *opportunity. An “audition” may be in-person or through electronic*
17 *means, live or recorded, and may include a performance or other*
18 *display of the artist’s promotional materials.*

19 *(c) “Employment opportunity” means the opportunity to obtain*
20 *work as an artist, whether compensated or not.*

21 *(d) “Fee” means any money or other valuable consideration*
22 *paid or promised to be paid by or on behalf of an artist for services*
23 *rendered or to be rendered by any person conducting business*
24 *under this chapter. “Fee” does not include the following:*

25 *(1) A fee calculated as a percentage of the income earned by*
26 *the artist for his or her employment as an artist.*

27 *(2) (A) Reimbursements for out-of-pocket costs actually incurred*
28 *by the payee on behalf of the artist for services rendered or goods*
29 *provided to the artist by an independent third party if all of the*
30 *following conditions are met:*

31 *(i) The payee has no direct or indirect financial interest in the*
32 *third party.*

33 *(ii) The payee does not accept any referral fee, kickback, or*
34 *other consideration for referring the artist.*

35 *(iii) The services rendered or goods provided for the*
36 *out-of-pocket costs are not, and are not represented to be, a*
37 *condition for the payee to register or list the artist with the payee.*

38 *(iv) The payee maintains adequate records to establish that the*
39 *amount to be reimbursed was actually advanced or owed to a third*
40 *party and that the third party is not a person with whom the payee*

1 *has a direct or indirect financial interest or from whom the payee*
2 *receives any consideration for referring the artist. To satisfy this*
3 *condition, the payee shall maintain the records for at least three*
4 *years and make them available for inspection and copying within*
5 *24 hours of a written request by the Labor Commissioner, the*
6 *Attorney General, a district attorney, a city attorney, or a state or*
7 *local enforcement agency.*

8 *(B) A person asserting a defense based upon this paragraph*
9 *has the burden of producing evidence to support the defense.*

10 ~~(d)~~

11 *(e) "Person" means an individual, company, society, firm,*
12 *partnership, association, corporation, limited liability company,*
13 *trust, or other organization.*

14 ~~*(e) "Talent counseling service" means a person that, for an*~~
15 ~~*advance fee from or on behalf of an artist, offers to provide,*~~
16 ~~*promises to provide, represents it will provide, represents it will*~~
17 ~~*make a referral to another person who will provide, attempts to*~~
18 ~~*provide, or provides the artist with career counseling, career*~~
19 ~~*consulting, vocational guidance, aptitude testing, career evaluation,*~~
20 ~~*or career planning as an artist.*~~

21 ~~*(f) "Talent listing service" means a person who, for an advance*~~
22 ~~*fee from or on behalf of an artist, provides or offers to provide the*~~

23 *(f) "Talent counseling service" means a person that is not*
24 *otherwise the talent manager of any artist and who, for a fee from,*
25 *or on behalf of, an artist, provides or offers to provide, holds itself*
26 *out as providing, or represents it will make a referral to another*
27 *person who will provide, an artist with career counseling, career*
28 *consulting, vocational guidance, aptitude testing, career*
29 *evaluation, or career planning as an artist.*

30 *(g) "Talent listing service" means a person that, for a fee from,*
31 *or on behalf of, an artist, provides or offers to provide, holds itself*
32 *out as providing, or represents it will make a referral to another*
33 *person who will provide, an artist with any of the following:*

34 *(1) A list of one or more auditions or employment opportunities.*

35 *(2) A list of talent agents or talent managers, including an*
36 *associate, representative, or designee thereof.*

37 ~~*(3) A service that matches the artist with one or more auditions*~~
38 ~~*or employment opportunities.*~~

39 ~~*(4) A service that matches the artist with a talent agents or talent*~~
40 ~~*manager, including an associate thereof.*~~

~~(5) A service that distributes the name, photograph, Internet Web site, filmstrip, videotape, audition tape, demonstration reel, résumé, portfolio, or other reproduction or promotional material of the artist to a talent agent or talent manager, or an associate thereof, or to a person represented as offering an audition or employment opportunity.~~

~~(6) A service that searches, or provides the artist with the ability~~

~~(3) A search, or providing the artist with the ability to perform a self-directed search of, search, of any database for an audition or employment opportunity, or a database of talent agents or talent managers, or an associate, representative, or designee thereof.~~

~~(4) Storage or maintenance for distribution or disclosure to a person represented as offering an audition or employment opportunity, or to a talent agent, talent manager, or an associate, representative, or designee of a talent agent or talent manager, of either of the following: (A) an artist's name, photograph, Internet Web site, filmstrip, videotape, audition tape, demonstration reel, résumé, portfolio, or other reproduction or promotional material of the artist or (B) an artist's schedule of availability for an audition or employment opportunity.~~

~~(g)~~

~~(h) "Talent scout" means an individual employed, appointed, or authorized by a talent training service, talent counseling service, or talent listing, or authorized by a talent service, who solicits or attempts to solicit an artist for the purpose of becoming a client of the service. The principals of a service are themselves talent scouts if they solicit on behalf of the service.~~

~~(h)~~

~~(i) "Talent service" means a talent counseling service, a talent listing service, or a talent training service.~~

~~(i) "Talent training service" means a person who, for an advance fee from or on behalf of an artist, provides or offers to provide the artist with lessons, coaching, seminars, workshops, or similar training.~~

~~1701.1. This chapter does not apply to the following:~~

~~(a) A public educational institution.~~

~~(b) (1) A private educational institution established solely for educational purposes which, as a part of its curriculum, offers employment counseling to its student body and satisfies either of the following:~~

1 ~~(A) The institution conforms to the requirements of Article 5~~
2 ~~(commencing with Section 33190) of Chapter 2 of Part 20 of~~
3 ~~Division 2 of Title 2 of the Education Code.~~

4 ~~(B) More than 90 percent of the students to whom instruction,~~
5 ~~training, or education is provided during any semester or other~~
6 ~~term of instruction have completed or terminated their secondary~~
7 ~~education or are beyond the age of compulsory high school~~
8 ~~attendance.~~

9 ~~(2) A person claiming exemption under this subparagraph shall~~
10 ~~maintain adequate records to establish the age of its students,~~
11 ~~including the name, date of birth, principal residence address,~~
12 ~~principal telephone number, driver's license number and state of~~
13 ~~issuance thereof, and dates of attendance, and shall make them~~
14 ~~available for inspection and copying within 24 hours of a written~~
15 ~~request by the Labor Commissioner, the Attorney General, a district~~
16 ~~attorney, a city attorney, or a state or local law enforcement agency.~~

17 ~~(3) A person claiming an exemption under this subdivision has~~
18 ~~the burden of producing evidence to establish the exemption.~~

19 ~~(c) A psychologist or psychological corporation, licensed~~
20 ~~pursuant to Chapter 6.6 (commencing with Section 2900) of~~
21 ~~Division 2 of the Business and Professions Code, that provides~~
22 ~~psychological assessment, career or occupational counseling, or~~
23 ~~consultation and related professional services within the scope of~~
24 ~~its practice.~~

25 ~~(d) An educational psychologist, licensed pursuant to Article 1~~
26 ~~(commencing with Section 4980) of Chapter 13 of Division 2 of~~
27 ~~the Business and Professions Code, who provides counseling~~
28 ~~services within the scope of his or her practice.~~

29 ~~(j) "Talent training service" means a person that, for a fee from,~~
30 ~~or on behalf of, an artist, provides or offers to provide, holds itself~~
31 ~~out as providing, or represents it will make a referral to another~~
32 ~~person who will provide, an artist with lessons, coaching, seminars,~~
33 ~~workshops, or similar training as an artist.~~

34
35 *Article 2. Advance-Fee Talent Representation Service*
36

37 *1702. No person shall own, operate, or act in the capacity of*
38 *an advance-fee talent representation service or advertise, solicit*
39 *for, or knowingly refer a person to, an advance-fee talent*
40 *representation service.*

1 1702.1. (a) “Advance-fee talent representation service” means
2 a person that, for a fee received from, or on behalf of, an artist,
3 provides, holds itself out as providing, offers to provide, or
4 represents it will make a referral to another person who will
5 provide, an artist with any of the following services:

6 (1) Procuring or attempting to procure an employment
7 opportunity or an engagement as an artist.

8 (2) Procuring or attempting to procure an audition for an artist.

9 (3) Managing or directing the development of an artist’s career.

10 (4) Procuring or attempting to procure a talent agent or talent
11 manager, including an associate, representative, or designee of a
12 talent agent or talent manager.

13 (b) “Advance-fee talent representation service” also means a
14 person that charges an artist a fee for any other product or service
15 in order for the artist to obtain any of the services described in
16 paragraphs (1) to (4), inclusive, of subdivision (a).

17 1702.3. A person who violates Section 1702 is subject to the
18 provisions of Article 4 (commencing with Section 1704).

19 1702.4. This article does not apply to the following:

20 (a) A public educational institution.

21 ~~(e)~~

22 (b) A nonprofit corporation, organized to achieve economic
23 adjustment and civic betterment, give vocational guidance,
24 including employment counseling services, and assist in the
25 placement of its members or others, if all of the following
26 conditions exist:

27 (1) None of the corporation’s directors, officers, or employees
28 receive any compensation other than a nominal salary for services
29 performed for the corporation.

30 (2) The corporation does not charge a fee for its services,
31 although it may request a voluntary contribution.

32 (3) The corporation uses any membership dues or fees solely
33 for maintenance.

34 ~~(f)~~

35 (c) A nonprofit corporation, formed in good faith for the
36 promotion and advancement of the general professional interests
37 of its members, that maintains a placement service principally
38 engaged to secure employment for its members with the state or
39 a county, city, district, or other public agency under contracts

1 providing employment for one year or longer, or with a nonprofit
2 corporation exempted by subdivision (e) (b).

3 ~~(g)~~

4 (d) A labor organization, as defined in Section 1117.

5 ~~(h)~~

6 (e) A newspaper, bona fide newsletter, magazine, trade or
7 professional journal, or other publication of general circulation,
8 *whether in print or on the Internet*, that has as its main purpose
9 the dissemination of news, reports, trade or professional
10 information, or information not intended to assist in locating,
11 securing, or procuring employment or assignments for others.

12 ~~(i) An Internet provider that has as its main purpose the~~
13 ~~dissemination of news, reports, trade or professional information,~~
14 ~~or information not intended to assist in locating, securing, or~~
15 ~~procuring employment or assignments for others.~~

16 ~~(j) An Internet Web site host that has no input into the content~~
17 ~~or design of a Web site, and has as its main purpose the~~
18 ~~dissemination of news, reports, trade or professional information,~~
19 ~~or information not intended to assist in locating, securing, or~~
20 ~~procuring employment or assignments for others.~~

21 (k) An advance-fee talent listing service, if all of the following
22 apply:

23 (1) A majority interest in the service is owned by one or more
24 colleges or universities, or alumni associations affiliated therewith,
25 and each of the colleges or universities is accredited by an
26 accrediting agency recognized by the United States Department
27 of Education and a member organization of the Council of
28 Postsecondary Accreditation.

29 (2) The service provides services exclusively for artists who are
30 the alumni of colleges or universities specified in paragraph (1).

31 (3) The service does not require, as a condition to receiving
32 services, an applicant to have completed courses or examinations
33 beyond the requirements for graduation from the applicant's college
34 or university specified in paragraph (1).

35 (4) More than 50 percent of the annual revenues received by
36 the service are derived from paid subscriptions of prospective
37 employers.

38 ~~(l) A public library.~~

39 ~~(m) A public institution.~~

1 ~~1701.2.— Compliance with this chapter does not satisfy and is~~
2 ~~not a substitute for the requirements mandated by any other~~
3 ~~applicable law, including the obligation to obtain a license under~~
4 ~~the Talent Agencies Act (Chapter 4 (commencing with Section~~
5 ~~1700))), prior to procuring, offering, promising, or attempting to~~
6 ~~procure employment or engagements for artists.~~

7 *(f) A public institution.*

8
9 ~~Article 2. Contract Agreement Provisions and Recordkeeping~~

10
11 *Article 3. Other Talent Services*

12
13 ~~1701.4.~~

14 *1703.* (a) Every contract and agreement between an artist and
15 a talent service shall be in writing, in at least 10-point type, and
16 contain all of the following provisions:

17 (1) The name, address, and telephone number of the talent
18 service, the artist to whom services are to be provided, and the
19 representative executing the contract on behalf of the talent service.

20 (2) A description of the services to be performed, a statement
21 when those services are to be provided, *and* the duration of the
22 contract, ~~and refund provisions if the described services are not~~
23 ~~provided according to the contract..~~

24 (3) Evidence of compliance with applicable bonding
25 requirements, including the *name of the bonding company and the*
26 *bond number, if any, and a statement that a bond in the amount*
27 *of fifty thousand dollars (\$50,000) must be posted with the Labor*
28 *Commissioner.*

29 (4) The amount of any fees to be charged to or collected from,
30 or on behalf of, the artist receiving the services, and the date or
31 dates when those fees are required to be paid.

32 (5) The following statements, in boldface type and in close
33 proximity to the artist's signature:

34
35 “(Name of talent service) IS A TALENT COUNSELING SERVICE,
36 TALENT LISTING SERVICE, ~~TALENT REPRESENTATION SERVICE,~~
37 OR TALENT TRAINING SERVICE (*whichever is applicable*). *THIS IS NOT*
38 *A TALENT AGENCY CONTRACT. ONLY A TALENT AGENT LICENSED*
39 *PURSUANT TO SECTION 1700.5 OF THE LABOR CODE MAY ENGAGE*
40 *IN THE OCCUPATION OF PROCURING, OFFERING, PROMISING, OR*

1 ATTEMPTING TO PROCURE EMPLOYMENT OR ENGAGEMENTS FOR
2 AN ARTIST. *(Name of talent service) IS PROHIBITED BY LAW FROM*
3 *OFFERING OR ATTEMPTING TO OBTAIN AUDITIONS OR EMPLOYMENT*
4 *FOR YOU. IT MAY ONLY PROVIDE YOU WITH TRAINING, COUNSELING,*
5 *OR LISTING INFORMATION (whichever is applicable). FOR MORE*
6 *INFORMATION, CONSULT CHAPTER 4.5 (COMMENCING WITH SECTION*
7 *1701) OF PART 6 OF DIVISION 2 OF THE LABOR CODE.*

8
9 YOUR RIGHT TO CANCEL
10 (enter date of transaction)
11

12 You may cancel this contract *and obtain a full refund*, without any penalty
13 or obligation, if notice of cancellation is given, in writing, within 10 business
14 days from the above date *even if services have been provided to you.*

15 To cancel this contract, mail or deliver *or send by facsimile transmission* a
16 signed and dated copy of the following cancellation notice or any other written
17 notice of cancellation, ~~or send a telegram containing a notice of cancellation~~
18 ~~to (name of talent service) to (name of talent service)~~ at (address of its place
19 of business), NOT LATER THAN MIDNIGHT OF (date). If the contract was
20 executed in part or in whole through the Internet, you may cancel the contract
21 by sending the notification to: (e-mail address).

22
23 CANCELLATION NOTICE
24

25 I hereby cancel this contract.

26
27 Dated: _____
28 _____

29 ~~Artist Signature.~~ Signature.

30 *If you cancel, all fees you have paid must be refunded to you within 10*
31 *business days after delivery of the cancellation notice to the talent service."*
32

33 *(6) A statement conspicuously disclosing whether the artist may*
34 *or may not obtain a refund after the 10-day cancellation period*
35 *described in paragraph (5) has expired.*

36 (b) Except for contracts executed over the Internet, a contract
37 subject to this section shall be dated and signed by the artist and
38 the representative executing the contract on behalf of the talent
39 service. In the case of a contract executed over the Internet, the
40 talent service shall give the artist clear and conspicuous notice of

1 the contract terms and provide to the artist the ability to
2 acknowledge receipt of the terms before acknowledging agreement
3 thereto. In any dispute regarding compliance with this subdivision,
4 the talent service shall have the burden of proving that the artist
5 received the terms and acknowledged agreement thereto.

6 (c) If the talent service ~~intends~~ *offers* to list or display
7 information about an artist, including a photograph, on the service's
8 Internet Web site, or on a Web site that the *talent* service has
9 authority to design or alter, the contract shall contain a notice that
10 the talent service will remove the listing and content within 10
11 days of a request by the artist or, in the case of a minor, the artist's
12 parent or guardian. The contract shall include a valid telephone
13 number, mailing address, and e-mail address for the talent service
14 to which a request for removal may be made.

15 (d) A contract between an artist and a talent service shall be
16 contained in a single document that includes the elements set forth
17 in this section. A contract subject to this section that does not
18 ~~comply with this subdivision, subdivisions (a) to (c), inclusive,~~
19 ~~and subdivision (e) comply with subdivisions (a) to (f), inclusive,~~
20 is voidable at the election of the artist *and may be canceled by the*
21 *artist at any time without any penalty or obligation.*

22 (e) ~~If a contract specifies a period during which it is to remain~~
23 ~~in force, the contract shall not be automatically renewed unless it~~
24 ~~provides conspicuous notice that it may be automatically renewed,~~
25 ~~a new 10-day cancellation period in accordance with paragraph~~
26 ~~(5) of subdivision (a), and the artist's signature or initials~~
27 ~~acknowledging these provisions.~~

28 (f) ~~If an artist cancels a contract by providing written notice of~~
29 ~~cancellation in the manner specified in paragraph (5) of subdivision~~
30 ~~(a), the talent service shall refund in full any advance fees paid by,~~
31 ~~or on behalf of, the artist within 10 business days after delivery of~~
32 ~~the demand to the talent service. If the contract was executed in~~
33 ~~part or in whole through the Internet, the artist may provide notice~~
34 ~~of cancellation through the Internet.~~

35 (e) (1) *An artist may cancel a contract for talent services within*
36 *10 business days of the date he or she executed the contract by*
37 *mailing, delivering, or sending by facsimile transmission to the*
38 *talent service, a signed and dated copy of the cancellation notice*
39 *or any other written notice of cancellation, or by sending a notice*
40 *of cancellation via the Internet if the contract was executed in part*

1 *or in whole through the Internet. A talent service shall refund all*
2 *fees paid by, or on behalf of, an artist within 10 business days after*
3 *delivery of the cancellation notice.*

4 *(2) Unless a talent service conspicuously discloses in the*
5 *contract that cancellation is prohibited after the 10-day*
6 *cancellation period described in paragraph (1), an artist may*
7 *cancel a contract for talent services at any time after the 10-day*
8 *cancellation period by mailing, delivering, or sending by facsimile*
9 *transmission to the talent service a signed and dated copy of the*
10 *cancellation notice or any other written notice of cancellation, or*
11 *by sending a notice of cancellation via the Internet if the contract*
12 *was executed in part or in whole through the Internet. Within 10*
13 *business days after delivery of the cancellation notice, the talent*
14 *service shall refund to the artist on a pro rata basis all fees paid*
15 *by, or on behalf of, the artist.*

16 *(f) A contract between an artist and a talent service shall not*
17 *be renewed automatically.*

18 *(g) The talent service shall maintain the address set forth in the*
19 *contract for receipt of cancellation and for removal of an Internet*
20 *Web site or other listing, unless it furnishes the artist with written*
21 *notice of a change of address. Written notice of a change of address*
22 *may be done by e-mail if the artist designates an e-mail address*
23 *in the contract for purposes of receiving written notice.*

24 *(h) The talent service shall advise a person inquiring about*
25 *cancelling a contract to follow the written procedures for*
26 *cancellation set forth in the contract.*

27 ~~*(i) If services are not performed as promised or as set forth in*~~
28 ~~*the contract, the talent service shall, upon demand by the artist,*~~
29 ~~*refund in full all fees paid for services not rendered within 10*~~
30 ~~*business days after delivery of the demand to the provider.*~~

31 ~~*(j)*~~

32 *(i) Before the artist signs a contract and before the artist or any*
33 *person acting on his or her behalf becomes obligated to pay or*
34 *pays any fee, the talent service shall provide a copy of the contract*
35 *to the artist for the artist to keep. If the contract was executed*
36 *through the Internet, the talent service may provide a copy of the*
37 *contract to the artist by making it available to be downloaded and*
38 *printed through the Internet.*

39 ~~*(k)*~~

(j) The talent service shall maintain the original executed contract on file at its place of business.

~~1701.5.~~

~~1703.1. (a) Every person engaging in the business of an advance-fee talent service shall keep and maintain records of the person's advance-fee talent service business. The records shall contain all of the following:~~

~~(1) The name and address of each artist employing that person as an advance-fee talent service; talent service business, including the following:~~

~~(1) The name and address of each artist contracting with the talent service.~~

~~(2) The amount of the advance fees paid by or for the artist during the term of the contract with the talent service.~~

~~(3) A record of all advertisements by the talent service, including the date and the publication in which the advertisement appeared, which shall be maintained for a period of three years following publication.~~

~~(4)~~

~~(3) Records described in clause (iv) of subparagraph (A) of paragraph (2) of subdivision (a) (d) of Section 1701.~~

~~(4) Records described in paragraph (1) of subdivision (b) of Section 1703.6.~~

~~(5) Records described in subdivision (j) of Section 1703.~~

~~(6) Records described in paragraph (1) of subdivision (a) of Section 1703.4.~~

~~(7) Records described in paragraph (2) of subdivision (a) of Section 1703.4.~~

~~(8) Records described in paragraph (2) of subdivision (c) of Section 1703.4.~~

~~(9) The name, address, date of birth, social security number, federal tax identification number, and driver's license number and state of issuance thereof, of the owner of the talent service and of the corporate officers of the talent service, if it is owned by a corporation.~~

~~(10) The legal name, principal residence address, date of birth, and driver's license number and state of issuance thereof, of every talent scout and the name each talent scout uses while soliciting artists.~~

~~(5)~~

1 (11) Any other information that the Labor Commissioner
2 requires.

3 (b) All books, records, and other papers kept pursuant to this
4 chapter by an advance-fee talent service shall be open at all
5 reasonable hours to inspection by the Labor Commissioner and
6 his or her representatives and to the representative of the Attorney
7 for inspection during the hours between 9 a.m. and 5 p.m.,
8 inclusive, Monday to Friday, inclusive, except legal holidays, by
9 a peace officer or a representative from the Labor Commissioner,
10 the Attorney General, any district attorney, or any city attorney.
11 Every advance-fee talent service shall furnish to the Labor
12 Commissioner and to the representative of the Attorney General,
13 any district, a law enforcement officer, the Attorney General, any
14 district attorney, or any city attorney, upon request, a true copy of
15 those books, records, and papers, or any portion thereof, and shall
16 make reports as the Labor Commissioner requires.

17 (c) An advance-fee talent service shall post in a conspicuous
18 place in its office a printed copy of this chapter and of other statutes
19 as may be specified by regulation of the Labor Commissioner.
20 Those copies shall also contain the name and address of the officer
21 charged with the enforcement of this chapter. The Labor
22 Commissioner shall furnish to the advance-fee talent service printed
23 copies of any statute required to be posted under this section.

24 (d)

25 1703.2. An advertisement soliciting artists to perform or
26 demonstrate any talent for the talent service, or to appear for an
27 interview with the talent service, shall clearly and conspicuously
28 state: "This is not an audition for employment or for obtaining a
29 talent agent or talent management."

30 —

31 Article 3. Written Disclosure

32 —

33 1701.8. Prior to requesting any advance fee, an advance-fee
34 talent service shall provide an artist with written disclosure of all
35 of the following:

36 (a) The name, address, and telephone number of the talent
37 service, and evidence of compliance with any applicable bonding
38 requirements, including the bond number, if any.

39 (b) A copy of the talent service's fee schedule and payment
40 terms.

Article 4. ~~Bond Requirement and Fees~~

~~1701.10.~~

1703.3. (a) Prior to advertising or engaging in business, a talent service shall file with the Labor Commissioner a bond in the amount of ~~ten thousand dollars (\$10,000)~~ *fifty thousand dollars (\$50,000)* or a deposit in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure. The bond shall be executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to ~~ten thousand dollars (\$10,000)~~ *fifty thousand dollars (\$50,000)*. The bond may be terminated pursuant to Section 995.440 of, or Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person ~~damaged~~ *injured* by any ~~fraud, misstatement, misrepresentation,~~ unlawful act or, omission, or failure to provide the services of the talent service ~~while acting within the scope of that employment or agency.~~

(c) The Labor Commissioner shall charge and collect a filing fee to cover the cost of filing the bond or deposit.

~~(d) The Labor Commissioner shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits.~~

~~(e)~~

(d) (1) Whenever a deposit is made in lieu of the bond otherwise required by this section, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Labor Commissioner of *injury resulting from an unlawful act, omission, or failure to provide the services of the talent service or* of a money judgment entered by a court, ~~together with evidence that the claimant is a person described in subdivision (b).~~

(2) When a claimant has established the claim with the Labor Commissioner, the Labor Commissioner shall review and approve the claim and enter the date of the approval thereon. The claim shall be designated an approved claim.

1 (3) When the first claim against a particular deposit has been
2 approved, it shall not be paid until the expiration of a period of
3 240 days after the date of its approval by the Labor Commissioner.
4 Subsequent claims that are approved by the Labor Commissioner
5 within the same 240-day period shall similarly not be paid until
6 the expiration of that 240-day period. Upon the expiration of the
7 240-day period, the Labor Commissioner shall pay all approved
8 claims from that 240-day period in full unless the deposit is
9 insufficient, in which case every approved claim shall be paid a
10 pro rata share of the deposit.

11 (4) Whenever the Labor Commissioner approves the first claim
12 against a particular deposit after the expiration of a 240-day period,
13 the date of approval of that claim shall begin a new 240-day period
14 to which paragraph (3) applies with respect to any amount
15 remaining in the deposit.

16 (5) After a deposit is exhausted, no further claims shall be paid
17 by the Labor Commissioner. Claimants who have had claims paid
18 in full or in part pursuant to paragraph (3) or (4) shall not be
19 required to return funds received from the deposit for the benefit
20 of other claimants.

21 (6) Whenever a deposit has been made in lieu of a bond, the
22 amount of the deposit shall not be subject to attachment,
23 garnishment, or execution with respect to an action or judgment
24 against the assignor of the deposit, other than as to an amount as
25 no longer needed or required for the purposes of this chapter and
26 that would otherwise be returned to the assignor of the deposit by
27 the Labor Commissioner.

28 (7) The Labor Commissioner shall return a deposit two years
29 from the date it receives written notification from the assignor of
30 the deposit that the assignor has ceased to engage in the business
31 or act in the capacity of a talent service or has filed a bond pursuant
32 to subdivision (a), provided that there are no outstanding claims
33 against the deposit. The written notice shall include all of the
34 following:

35 (A) The name, address, and telephone number of the assignor.

36 (B) The name, address, and telephone number of the bank at
37 which the deposit is located.

38 (C) The account number of the deposit.

39 (D) A statement that the assignor is ceasing to engage in the
40 business or act in the capacity of a talent service or has filed a bond

1 with the Labor Commissioner. The Labor Commissioner shall
2 forward an acknowledgment of receipt of the written notice to the
3 assignor at the address indicated therein, specifying the date of
4 receipt of the written notice and the anticipated date of release of
5 the deposit, provided that there are then no outstanding claims
6 against the deposit.

7 (8) A superior court may order the return of the deposit prior
8 to the expiration of two years upon evidence satisfactory to the
9 court that there are no outstanding claims against the deposit, or
10 order the Labor Commissioner to retain the deposit for a specified
11 period beyond the two years to resolve outstanding claims against
12 the deposit.

13 (9) This subdivision applies to all deposits retained by the Labor
14 Commissioner. The Labor Commissioner shall notify each assignor
15 of a deposit it retains and of the applicability of this section.

16 (10) Compliance with Sections 1700.15 and 1700.16 of this
17 code or Section 1812.503, 1812.510, or 1812.515 of the Civil Code
18 shall satisfy the requirements of this section.

19 —

20 ~~Article 5. Prohibited Acts~~

21 —

22 ~~1701.11. A person shall not provide or offer to provide any of~~
23 ~~the following services to an artist in exchange for an advance fee~~
24 ~~from or on behalf of the artist:~~

25 ~~(a) Employment or an engagement as an artist.~~

26 ~~(b) An audition.~~

27 ~~(c) Management or development of the artist's career.~~

28 ~~(d) Procurement of a talent agent or talent manager, including~~
29 ~~an associate thereof.~~

30 ~~1701.12.~~

31 ~~1703.4. (a) A talent service, its owners, directors, officers,~~
32 ~~agents, and employees shall not do any of the following:~~

33 ~~(1) Make or cause to be made or published any false, fraudulent,~~
34 ~~misleading, or deceptive advertisement or representation.~~

35 ~~(2) Provide an artist any false or misleading information,~~
36 ~~representation, promise or guarantee concerning any audition,~~
37 ~~engagement, job, or employment.~~

38 ~~(3)~~

39 ~~(1) Make or cause to be made any advertisement or~~
40 ~~representation concerning expressly or impliedly offering the~~

1 opportunity for an artist to meet with or audition before any
2 producer, director, casting director, or any associate thereof, or
3 any other person who makes, or is represented to make, decisions
4 for the process of hiring artists for employment as an artist, or any
5 talent agent or talent manager, or any associate, *representative, or*
6 *designee* thereof, unless the talent service maintains for inspection
7 and copying written evidence of the supporting facts, including
8 the name, business address, and job title of all persons conducting
9 the meeting or audition, and the title of the production and the
10 name of the production company.

11 ~~(4)~~

12 (2) Make or cause to be made any advertisement or
13 representation that any artist, whether identified or not, has
14 obtained an audition, employment opportunity, or employment as
15 an artist in whole or in part by use of the talent service unless the
16 talent service maintains for inspection written evidence of the
17 supporting facts upon which the claim is based, including the name
18 of the artist and the date the contract was executed.

19 ~~(5)~~

20 (3) Charge or attempt to charge an artist for an audition or
21 employment opportunity.

22 ~~(6) Charge or attempt to charge an artist, directly or indirectly,~~

23 (4) *Require an artist, as a condition for using the talent service*
24 *or for obtaining an additional benefit or preferential treatment*
25 *from the talent service, to pay a fee for creating or providing*
26 *photographs, filmstrips, videotapes, audition tapes, demonstration*
27 *reels, or other reproductions of the artist, Internet Web sites, casting*
28 *or talent brochures, or other promotional materials for the artist.*

29 ~~(7) Refer an artist to any person who charges the artist a fee for~~
30 ~~the services described in paragraphs (5) and (6) in which the talent~~
31 ~~service has a direct or indirect financial interest.~~

32 (5) *Charge or attempt to charge an artist any fee not disclosed*
33 *pursuant to paragraph (4) of subdivision (a) of Section 1703.*

34 (6) *Refer an artist to a person who charges the artist a fee for*
35 *any service or any product in which the talent service, its owners,*
36 *directors, officers, agents, or employees have a direct or indirect*
37 *financial interest, unless the fee and the financial interest are*
38 *conspicuously disclosed in a separate writing provided to the artist*
39 *to keep prior to his or her execution of the contract with the talent*
40 *service.*

1 (7) *Require an artist, as a condition for using a talent service*
2 *or for obtaining any additional benefit or preferential treatment*
3 *from the talent service, to pay a fee to any other talent service in*
4 *which the talent service, its owners, directors, officers, agents, or*
5 *employees have a direct or indirect financial interest.*

6 (8) *Accept any compensation or other consideration for referring*
7 *an artist to any person—charging the artist a fee for services*
8 *described in paragraphs (5) and (6) or to a talent training service*
9 *or to a talent listing service: charging the artist a fee.*

10 (9) *Fail to remove—the an artist's Internet Web site and its*
11 *content of an artist within 10 days of a request complying with the*
12 *notice requirements of this chapter by the artist, or parent of*
13 *guardian of within 10 days of delivery of a request made by*
14 *telephone, mail, facsimile transmission, or electronic mail from*
15 *the artist or from a parent or guardian of the artist if the artist is*
16 *a minor.*

17 (b) *A talent training service and talent counseling service and*
18 *the owners, officers, directors, agents, and employees of the talent*
19 *training service or talent counseling service shall not own, operate,*
20 *or have a direct or indirect financial interest in a talent listing*
21 *service.*

22 (c) *A talent listing service and its owners officers, directors,*
23 *agents, and employees shall not do either of the following:*

24 (1) *Own, operate, or have a direct or indirect financial interest*
25 *in a talent training service or a talent counseling service.*

26 (2) *Provide a listing of an audition, job, or employment*
27 *opportunity without written permission for the listing. A talent*
28 *listing service shall keep and maintain a copy of all original*
29 *listings; the name, business address, and business telephone number*
30 *of the person granting permission to the talent listing service to*
31 *use the listing; and the date the permission was granted.*

32 1703.5. *No talent scout shall use the same name as used by*
33 *any other talent scout soliciting for the same talent service, and*
34 *no talent service shall permit a talent scout to use the same name*
35 *as used by any other talent scout soliciting for the talent service.*

36 1703.6. *This article does not apply to any of the following:*

37 (a) *An entity described in subdivisions (a), (b), (d), (e), and (f)*
38 *of Section 1702.4.*

39 (b) (1) *A private educational institution established solely for*
40 *educational purposes which, as a part of its curriculum, offers*

1 *employment counseling to its student body and satisfies either of*
2 *the following:*

3 *(A) The institution conforms to the requirements of Article 5*
4 *(commencing with Section 33190) of Chapter 2 of Part 20 of*
5 *Division 2 of Title 2 of the Education Code.*

6 *(B) More than 90 percent of the students to whom instruction,*
7 *training, or education is provided during any semester or other*
8 *term of instruction have completed or terminated their secondary*
9 *education or are beyond the age of compulsory high school*
10 *attendance. A person claiming exemption under this subparagraph*
11 *shall maintain adequate records to establish the age of its students,*
12 *including the name, date of birth, principal residence address,*
13 *principal telephone number, driver's license number and state of*
14 *issuance thereof, and dates of attendance, and shall make them*
15 *available for inspection and copying within 24 hours of a written*
16 *request by the Labor Commissioner, the Attorney General, a*
17 *district attorney, a city attorney, or a state or local law enforcement*
18 *agency.*

19 *(2) A person claiming an exemption under this subdivision has*
20 *the burden of producing evidence to establish the exemption.*

21 *(c) A psychologist or psychological corporation, licensed*
22 *pursuant to Chapter 6.6 (commencing with Section 2900) of*
23 *Division 2 of the Business and Professions Code, that provides*
24 *psychological assessment, career or occupational counseling, or*
25 *consultation and related professional services within the scope of*
26 *its practice.*

27 *(d) An educational psychologist, licensed pursuant to Article 1*
28 *(commencing with Section 4980) of Chapter 13 of Division 2 of*
29 *the Business and Professions Code, who provides counseling*
30 *services within the scope of his or her practice.*

31 *(e) A talent listing service, if all of the following apply:*

32 *(1) A majority interest in the service is owned by one or more*
33 *colleges or universities, or alumni associations affiliated therewith,*
34 *and each of the colleges or universities is accredited by an*
35 *accrediting agency recognized by the United States Department*
36 *of Education and a member organization of the Council of*
37 *Postsecondary Accreditation.*

38 *(2) The service provides services exclusively for artists who are*
39 *the alumni of colleges or universities specified in paragraph (1).*

(3) *The service does not require, as a condition to receiving services, an applicant to have completed courses or examinations beyond the requirements for graduation from the applicant's college or university specified in paragraph (1).*

(4) *More than 50 percent of the annual revenues received by the service are derived from paid subscriptions of prospective employers.*

(f) *A public library.*

Article 6-4. Remedies

~~1701.13.~~

1704. A person, including, an *owner*, officer, director, agent, or employee of a talent service, who violates any provision of this chapter is guilty of a misdemeanor. Each violation is punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment. However, payment of restitution to an artist shall take precedence over the payment of a fine.

~~1701.15.~~

1704.1. The Attorney General, a district attorney, or a city attorney may institute an action for a violation of this chapter, including an action to restrain and enjoin a violation.

~~1701.16.~~

1704.2. A person who is injured by a violation of this chapter or by the breach of a contract subject to this chapter may bring an action for recovery of damages or to restrain and enjoin a violation, or both. *The court shall award to a plaintiff who prevails in an action under this chapter reasonable attorney's fees and costs. If the court determines by clear and convincing evidence that the breach of contract or violation was willful, the court may award punitive damages in addition to any other amounts awarded to the plaintiff.* The amount awarded for damages for a violation of this chapter shall be no greater than three times the damages actually incurred and not less than the amount paid by the artist to the service. When a service refuses or is unwilling to pay damages awarded by a judgment that has become final, the judgment may be satisfied from the bond or deposit maintained by the Labor Commissioner. If a plaintiff prevails in an action under this chapter, the plaintiff shall be awarded reasonable attorney's fees and costs.

1 ~~If the court determines, by clear and convincing evidence, that the~~
2 ~~breach of contract or violation of this chapter was willful, the court,~~
3 ~~in its discretion, may award punitive damages in addition to any~~
4 ~~other amounts: chapter shall be not less than three times the~~
5 ~~amount paid by the artist, or on behalf of the artist, to the talent~~
6 ~~service or the advance-fee talent representation service.~~

7 *1704.3. The Labor Commissioner shall use the proceeds of a*
8 *bond or deposit posted by a person pursuant to this chapter to*
9 *satisfy a judgment or restitution order resulting from the person's*
10 *violation of a provision of this chapter, if the person fails to pay*
11 *all amounts required by the judgment or restitution order.*

12
13 *Article 5. General Provisions*
14

15 ~~1701.17.~~

16 *1705.* The provisions of this chapter are not exclusive and do
17 not relieve a person subject to this chapter from the duty to comply
18 with all other laws.

19 ~~1701.18.~~

20 *1705.1.* The remedies provided in this chapter are not exclusive
21 and shall be in addition to any other remedies or procedures
22 provided in any other law.

23 ~~1701.19.~~

24 *1705.2.* A waiver by an artist of the provisions of this chapter
25 is deemed contrary to public policy and void and unenforceable.
26 An attempt by a *person or a talent service* to have an artist waive
27 his or her rights under this chapter is a violation of this chapter.

28 ~~1701.20.~~

29 *1705.3.* If any provision of this chapter or the application
30 thereof to any person or circumstances is held unconstitutional,
31 the remainder of the chapter and the application of that provision
32 to other persons and circumstances shall not be affected thereby.

33 *1705.4. Compliance with this chapter does not satisfy and is*
34 *not a substitute for the requirements mandated by any other*
35 *applicable law, including the obligation to obtain a license under*
36 *the Talent Agencies Act (Chapter 4 (commencing with Section*
37 *1700)), prior to procuring, offering, promising, or attempting to*
38 *procure employment or engagements for artists.*

39 SEC. 4. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

8
9
10 CORRECTIONS:

11 Text—Pages 5 and 11.
12

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